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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**
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9 LYON FINANCIAL SERVICES, INC.,

10 Plaintiff,

11 vs.

12 BLACKCOMB GROUP, INC. et al.,

13 Defendants.

14) Case No. 2:05-CV-1042-RLH (GWF)
14)
14) **ORDER & FINDINGS AND**
14) **RECOMMENDATIONS**

15 This matter is before the Court on Plaintiff's Ex Parte Motion To Enlarge The Period of Time
16 For Service of Process on Gary Topolewski (#14), filed October 23, 2006.

17 Plaintiff filed its Complaint in this action on August 25, 2005. Plaintiff attempted to serve
18 Defendant Gary Topolewski on December 19, 2005 by leaving copies of the summons with an
19 employee at Mr. Topolewski's place of business. On May 16, 2006, the Court entered an Order (#13)
20 stating that service upon Defendant Gary Topolewski was improper. Pursuant to Fed. R. Civ. Pro.
21 4(e)(2), an individual must be served individually or at the defendant's place of residence upon
22 someone of suitable age, then residing therein. The Court further stated that because of this improper
23 service and the lapse of time, the Complaint as it pertains to Defendant Topolewski is subject to
24 dismissal. Pursuant to Fed. R. Civ. Pro. 4(m), a suit is subject to dismissal when service is not
25 performed within 120 days of filing the Complaint. Plaintiff now brings this Ex Parte Motion To
26 Enlarge The Period of Time For Service of Process on Gary Topolewski (#14) over a year after the
27 Complaint was filed and five months after the Court's previous Order (#13) instructing Plaintiff
28 regarding their improper service. The Motion is therefore untimely. Accordingly,

IT IS HEREBY ORDERED that Plaintiff's Ex Parte Motion To Enlarge The Period of Time For Service of Process on Gary Topolewski (#14) is **DENIED**.

IT IS FURTHER RECOMMENDED that Plaintiff's Complaint (#1), as it pertains to Defendant Gary Topolewski, be **DISMISSED**.

DATED this 27th day of October, 2006.

George Foley Jr.
GEORGE FOLEY, JR.
UNITED STATES MAGISTRATE JUDGE